# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~462~~ 227 44

ROBERT S. STEVENS, PLAINTIFF IN ERROR,

vs.

VICTORIA SMITH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED APRIL 22, 1869.

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1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. judges of the supreme court of the State of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which in said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Victoria Smith, plaintiff, and Robert S. Stevens, defendant, wherein was drawn in question the construction of a treaty, and also a statute of the United States, and the decision was against the right, title, and authority specially set up and claimed under such treaty and statute, a manifest error hath happened, to the great damage of the said Robert S. Stevens, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then,

2 under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what, if of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.]

A. S. THOMAS,
*Clerk of U. S. Circuit Court District of Kansas.*

(Indorsed:) Robert S. Stevens vs. Victoria Smith. Writ of error. Filed Jan'y 8, 1869.

E. B. FOWLER, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

To Victoria Smith:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Robert S. Stevens is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel A. Kingman, chief justice of the supreme court of the State of Kansas, this 8th day of January, in the year of our Lord 1869.

SAMUEL A. KINGMAN.

4 STATE OF KANSAS, *Shawnee County, ss:*

Wilson Shannon being first duly sworn, deposeth and saith that on the 9th day of January, A. D. 1869, he delivered to David Brockway, esq., one of the attorneys of record for the within named Victoria Smith, defendant in error, a true copy of the within citation, and at the same time exhibited to him the within citation.

WILSON SHANNON.

Sworn to and subscribed before me, this 9th day of January, A. D. 1869.

[SEAL.] E. B. FOWLER,
*Clerk Supreme Court State of* Kansas.

(Indorsed:) Robert S. Stevens vs. Victoria Smith. Citation.
Filed January 9th, A. D. 1869.

E. B. FOWLER. *Clerk Sup. C.*

5 Be it remembered that on the 6th day of January, 1864, R. S. Stevens filed in the clerk's office of the supreme court of the State of Kansas, a petition in error, wherein Victoria Smith was defendant; which said petition is in words & figures following, to wit:

6 State of Kansas, Supreme Court.

ROBERT S. STEVENS
*vs.*
VICTORIA SMITH. } Petition in error.

To Snawnee county district court:

The said Robert S. Stevens, plaintiff, complains of the said Victoria Smith, defendant, for that the said Victoria Smith, at the November term of the district court, A. D. 1863, sitting in & for the county of Shawnee, in the State of Kansas, recovered a judgment by the consideration of said court, against the said plaintiff in a certain action ther'n pending in said court, wherein the said Victoria Smith was plaintiff & the said Robert S. Stevens was defendant, a copy of the record of said judgment and proceedings in which case, duly certified, is hereto attached, marked A, and made a part of this petition; and the said Robert S. Stevens avers that there is error in the said record & proceedings in this, to wit:

1st. That the said court erred in rejecting the deed from the said Victoria Smith to the said Robert S. Stevens, for the premises described in the petition.

7 2nd. That the judgment for the said Victoria Smith, when it ought to have been given for the said Robert S. Stevens.

The said Robert S. Stevens therefore prays that said judgment may be reversed & the said plaintiff restored to all things he has lost by reason thereof.

WILSON SHANNON,
*Attorney for Pl'ff in Error.*

We hereby waive the issuance and service of summons in the above-entitled action, and hereby make a voluntary appearance therein.

J. AND D. BROCKWAY,
*Att'ys for Def'ts in Error.*

8 VICTORIA SMITH
*vs.*
ROBERT S. STEVENS. } 527.

Be it remembered that on the 2nd day of March, in the year of our Lord one thousand eight hundred and sixty-three, the said plaintiff filed in the clerk's office of the district court within and for the county of Shawnee, in the third judicial district of the State of Kansas, her certain petition in [in] words and figures following, to wit:

Dist. court, Shawnee county, State of Kansas.

VICTORIA SMITH, pl'ff,
*v.*
ROBERT S. STEVENS, defendant. } Petition.

The said Victoria Smith, plaintiff, complains of the said Robert S. Stevens, defendant, for that the said plaintiff is the owner in fee simple of, and has a real estate in, the following-described real property, to wit: the northeast quarter of section or reserve number six of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee & State of Kansas, con-
9 sisting of one hundred and sixty acres of land; and the said plaintiff is entitled to the possession thereof, and the said defendant unlawfully keeps the said plaintiff out of the possession of the said real property. Wherefore the said pl'ff claims judgment against the said defendant for the delivery of the possession of the said premises to the said plaintiff, and also for the costs of this action.

J. AND G. BROCKWAY,
*Attorneys for Plaintiff.*

Upon which are the endorsements in words and figures following, to wit:

Victoria Smith vs. Robert S. Stevens. Petition.
Filed March 2d, 1863.

HIRAM McARTHUR, *Clerk*,
By J. B. WHITTAKER, *Dep'y.*

And on the same day, to wit, on the 2d day of March, A. D. 1863, was filed in the clerk's office of the court aforesaid, a certain precipe in words and figures following, to wit:

District court, Shawnee county, State of Kansas.

VICTORIA SMITH, pl'f,
*vs.*
ROBERT S. STEVENS, def't, } Precipe.

10 The clerk of said court will issue a summons in this action against the said Robert S. Stevens, directed to the sheriff of Shawnee county, returnable according to law.

J. & D. BROCKWAY,
*Att'ys for Plaint'f.*

Upon which are the endorsements in words and figures following, to wit:

527. Victoria Smith vs. Robert S. Stevens. Precipe.
Filed March 2d, 1863.

HIRAM McARTHUR, *Clerk*,
By J. B. WHITTAKER, *Dep'y.*

And on the same day, to wit, on the 2d day of March, A. D. 1863, was issued out of the clerk's office of the court aforesaid a certain summons in words and figures following, to wit:

UNITED STATES OF AMERICA,
*State of Kansas, County of Shawnee, ss:*

The State of Kansas to the sheriff of Shawnee county, greeting:

You are hereby commanded to notify Robert S. Stevens that he has been sued by Victoria Smith in the district court within and for the county of Shawnee in the third judicial district of the State of Kansas, sitting for the trial of causes arising under the laws of the State of Kansas, and that unless he answer by the first day of April, A. D. 1863, the petition of the said Victoria Smith against
11 him filed in the clerk's office of the court aforesaid, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons on or before the 12th day of March, A. D. 1863.

Witness my hand and private seal, (there being no public seal provided,) affixed at my office, in the city of Topeka, this 2d day of March, A. D. 1863.

HIRAM McARTHUR, *Clerk*,
By J. B. WHITTAKER, *Dep'y.*

[U. S. R. S.]

Upon which are the endorsements in words and figures following, to wit:

527. Victoria Smith vs. Robert S. Stevens. D. C. S. C. No. 527. Sumons issued March 2d, 1863. Returnable March 12, 1863. J. & D. Brockway, att'ys for pl'ff.
Filed March 7th, A. D. 1863.

H. McARTHUR, *Clerk*,
By J. B. WHITTAKER, *Dep'y.*

Received this writ this 2d day of March, 1863, at 3 of the clock p. m.

A. H. HALE, *Sheriff.*

I executed this writ this 2d day of March, A. D. 1863, by delivering a true and certified copy of this summons to the defendant, Robert S. Stevens, in person.

A. H. HALE, *Sheriff.*

Fees: Service, .75; miles, 10, 0.85.

12 And afterwards, to wit, on the 18th day of March, A. D. 1863, was filed in the clerk's office of the court aforesaid, a certain answer in words and figures following, to wit:

State of Kansas, Shawnee county, district court.

VICTORIA SMITH
*vs.*
ROBERT S. STEVENS. } Answer of defendant.

And now comes the (defendant) said Robert S. Stevens, defendant, and for answer to the petition of the said Vicoria Smith, saith that the said Victoria Smith is not the owner in fee simple, and has no real estate in the lands and tenements in her said petition demanded, in manner and form as is therein set forth; and of this he puts himself upon the country.

ROBERT S. STEVENS,
By WILSON SHANNON,
*His Attorney.*

Upon which are the endorsements in words and figures following, to wit:

527. Victoria Smith vs. Robert S. Stevens. Answer Wilson Shannon.
Filed March 18, A. D. 1863.

HIRAM McARTHUR, *Clerk.*

And afterwards, to wit, on the 23d day of May, A. D. 1863, at the May term of the court aforesaid, among others, were had the following proceedings, to wit:

VICTORIA SMITH
*vs.*
ROBERT S. STEVENS. } 527.

13 And now comes the said plaintiff, by J. & D. Brockway, her attorneys, and also comes the said defendant, by Elmore and Shannon, his attorneys, and the issues being joined between the parties, and the parties being ready for trial, comes a jury, to wit: R. Galt, L. J. Atwood, Wm. H. Morgan, John Porter, Peter Spangler, Peter Keyes, William Flesher, Hiram Shields, Daniel

Gilson, Isaac Renfro, Lysanius Wood, & S. D. McDonald, twelve good and lawful men of the body of the county of Shawnee, who, being duly sworn to try the issues herein joined between the parties, and who, upon hearing the proofs and allegations by the parties submitted, and being charged by the court, render to the court the following verdict, to wit:

VICTORIA SMITH
*vs.*
ROBERT S. STEVENS. } District court, Shawnee co., State of Kansas.

We, the jurors in this case, find for the plaintiff.

HIRAM SHIELDS, *Foreman.*

Now, therefore, it is considered and adjudged by the court now here, that the said plaintiff, Victoria Smith, recover of the said defendant, Robert S. Stevens, the lands and tenements in the said plaintiff's petition described, to wit: The northeast quarter of section or reserve number six of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee, 14 and State of Kansas, and her costs herein expended, and that the said plaintiff have possession of said premises, and hereof let execution issue.

And afterwards, to wit, on the 16 day of June, A. D. 1863, at the May term of the court aforesaid, among others were had the following proceedings, to wit:

*Motion for a new trial.*

VICTORIA SMITH
*vs.*
ROBERT S. STEVENS. } 527.

And now comes the said defendant and moves the court for a new trial in the above-entitled cause.

ROBERT S. STEVENS,
*Defendant.*

And afterwards, to wit, on the 18 day of November, A. D. 1863, at the November term of the court aforesaid, among others were had the following proceedings, to wit:

VICTORIA SMITH
*vs.*
ROBERT S. STEVENS. } 527.

And now comes the said plaintiff, by J. & D. Brockway, her attorneys, and also comes the said defendant, by Wilson Shannon, his attorney, and the issues being joined herein, and parties being ready for trial, comes a jury, to wit: Isaac Renfro, Peter Heil, F. P. Baker, B. A. Murphy, John W. Brown, Jacob Willets, Thomas McGuire, William P. Roberts, Lysanius Wood, Adam Bower, Nathaniel L.

Williams, and William Sharp, twelve good and lawful men of the
15 body of the county of Shawnee, who, being duly sworn to try the issues herein, and who, upon hearing the proofs and allegations by the parties submitted, and being charged by the court, return into court, without leaving the jury box, the following verdict, to wit:

VICTORIA SMITH, pl'ft,
*vs.*
ROBERT S. STEVENS, def't. } District court, Shawnee county.

We, the jurors, find for the plaintiff in this cause.

LYSANIUS WOOD, *Foreman.*

Now, therefore, it is considered and adjudged by the court now here, that the said plaintiff, Victoria Smith, recover of the said defendant, Robert S. Stevens, the lands and tenements in the said plaintiff's petition described, to wit: The north-east quarter of section or reserve number six of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee, and State of Kansas, consisting of one hundred and sixty acres of land, and her costs herein expended, and that the said plaintiff have possession of said premises, and hereof let execution issue.

And afterwards, to wit, on the 23d day of November, A. D. 1863, at the November term of the court aforesaid, among others were had the following proceedings, to wit:

16 VICTORIA SMITH,
*vs.* } 527.
ROBERT S. STEVENS.

And comes said defendant, by Wilson Shannon, his attorney, and presents his certain bill of exceptions taken on the trial of this case, which is allowed and signed by thi court, and ordered to be placed on file with the papers and made a part of the record in this cause.

And on the same day, to wit, on the 23d day of November, A. D. 1863, was filed in the clerk's office of the court aforesaid, a certain bill of exceptions in words and figures following, to wit:

State of Kansas, Shawnee county, district court.

VICTORIA SMITH
*vs.*
ROBERT S. STEVENS.

Be it remembered, that on the trial of this cause in the district court, sitting in and for the said county of Shawnee, at the November term thereof, A. D. 1863, the counsel for the said defendant admitted that the said plaintiff is the same person named as reservee in the reserve or section number six in the sixth article of the treaty made and concluded at the city of St. Louis, in the State of Missouri, on

the 3d day of June, A. D. 1825, between the United States
17 of America and the Kansas nation of Indians, and by agreement of the counsel as well for the said plaintiff as the said defendant, said treaty was admitted as evidence to said jury. And it was further admitted by the attorney for the said defendant that the premises described in said petition of said plaintiff are part and parcel of the said reserve or section number six in the sixth article of the said treaty, and that said plaintiff was in possession thereof on the 14th day of August, A. D. 1860, whereupon the said plaintiff rested her cause.

The said defendant, to maintain the issues on his part, then produced in court, and offered in evidence, a deed signed by Victoria Pappan, and dated on the 14th day of August, A. D. 1860, and duly acknowledged on the same day by the said grantor before Jacob Safford, a notary public in and for the said county of Shawnee, under his notarial seal, which deed purported to convey to the said defendant the said premises in the said petition described, for the consideration of eight hundred dollars, the receipt of which is acknowledged in said deed. It was also admitted by the counsel for the
18 plaintiff that the said Victoria Pappan, the grantor in said deed, is the same person with the said plaintiff; and it was further agreed by the counsel for the said plaintiff and said defendant that an act of Congress, entitled an act to settle the titles to certain lands set apart for the use of certain half-breed Kansas Indians in Kansas Territory, passed the 26th day of May, A. D. 1860, and the resolution of Congress repealing part thereof passed the 17 day of July, A. D. 1862, should be considered in evidence in this case. Whereupon the said plaintiff, by her attorney, objected to said deed going in evidence to the jury, on the ground that at the time of the execution and delivery thereof as aforesaid, the said plaintiff had no legal right or authority, under the treaty and laws of Congress above referred to, to convey said premises, in the said deed described, to the said defendant, and had no right or legal power to alienate the same; which objection of the said plaintiff to the said deed being received in evidence, was sustained by the court, and the same was excluded from the jury by the court. To which ruling of the court the defendant, by his attorney, then and there excepted, and prayed that his bill of exceptions in that behalf might be allowed, which is accordingly done, and on motion of said defendant, made a
19 part of the record in this case.

November, A. D. 1863.

JACOB SAFFORD, *Judge.*

Upon which are the endorsements in words and figures following, to wit:

527. Victoria Smith vs. Robert S. Stevens. Bill of exceptions. Filed November 23, 1863.

HIRAM McARTHUR, *Clerk.*

STATE OF KANSAS, *Shawnee county, ss:*

I, Hiram McArthur, clerk of the district court within and for the county of Shawnee and State of Kansas, do hereby certify that the foregoing is a true copy of the paper and transcript of the record in the above-entitled cause, as the same now remains on file and of record in my office.

Witness my hand and the seal of said court affixed at office in the city of Topeka, this 5th day of January, A. D. 1864.

HIRAM MCARTHUR, *Clerk.*

20 And on the 15th day of January, A. D. 1864, the following proceedings were had to wit:

Supreme court State of Kansas.

ROBERT S. STEVENS }
*vs.*
VICTORIA SMITH. }

This cause coming on to be heard on the petition in error, and a transcript of the record of the district court of Shawnee county, & the argument of counsel being heard as well for the plaintiff as defendant, the court decided that at the date of the said deed in the bill of exceptions mentioned from the said defendant in error to the said plaintiff in error, the said defendant had no right or legal authority to sell and convey the said premises in the petition of said plaintiffs below described, under the treaty made & concluded at the city of St. Louis, in the State of Missouri, on the 3d day of June, A. D. 1825, between the United States of America and the Kansas nation of Indians, in Kansas Territory, passed the 26th day of May, A. D. 1860. And that said deed from said defendant to the said plaintiff is void, and that the same was rightfully rejected in
21 the court below. Whereupon the court find that there is no error in the proceedings and judgment of the court below. And the court do order and adjudge that the judgment of the court below be and the same is hereby confirmed, and the counsel for the plaintiff in error excepts to the ruling of the court, & prays that his exceptions may be noted on the journals of this court, which is accordingly done by order of this court. And it is further considered and adjudged that the plaintiff in error, Robert S. Stevens, pay the costs herein, and that execution issue therefor.

22 And on the 8th day of January, A. D. 1869, a bond was given and approved of by Samuel A. Kingman, chief justice of the supreme court of the State of Kansas, and remains on file in this office.

And also on same day, to wit, 8th day of January, A. D. 1869, a copy of the writ of error in this case endorsed in words as follows, to wit:

"Copy of writ of error lodged in pursuance of the statute in such case made and provided, for the above-named Victoria Smith.

"WILSON SHANNON,
"*Att'y for Plaintiff.*"

Filed in this office on the 8th day of January, A. D. 1869, and still remains on file.

E. B. FOWLER, *Clerk.*

23 STATE OF KANSAS, *Supreme Court, ss:*

In obedience to [to] the command contained in the within writ, I, E. B. Fowler, clerk of the supreme court of the State of Kansas, herewith forward to the Supreme Court of the United States held at Washington, a full, true, and complete transcript of the record and proceedings in the case of Robert S. Stevens, plaintiff in error, vs. Victoria Smith, defendant in error, as fully as the same remains of record and on file in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court. Done at office in Topeka, this 11th day of January, A. D. 1869.

[SEAL] E. B. FOWLER, *Clerk.*